

OS REGISTRY
FILE Commit 14
SECOM-M-233

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

28 April 1980

Minutes
Special Meeting
Thursday, April 24, 1980, 1330-1530
Room 1S06, Community Headquarters Building

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[REDACTED]
Presiding

MEMBERS PRESENT

25X1A Col. [REDACTED] Defense Intelligence Agency
25X1A Col. Herbert Kamm, Department of the Air Force
25X1A Mr. [REDACTED] Central Intelligence Agency
25X1A Mr. D. Jerry Rubino, Department of Justice
25X1A Mr. Dennis Southern, Department of the Treasury

ALTERNATES PRESENT

25X1A Mr. [REDACTED] National Security Agency
25X1A Mr. [REDACTED] National Security Agency
25X1A Mr. Frank Dill, Department of the Army

ALSO PRESENT

25X1A Mr. [REDACTED] Central Intelligence Agency
25X1A Mr. John H. Clemonns, Department of State
25X1A Mr. [REDACTED] Central Intelligence Agency
25X1A Lt. Col. John Rothrock, Office, Secretary of the Air Force,
25X1A Space Systems
25X1A Mr. [REDACTED] Executive Secretary, Security Committee
25X1A Col. [REDACTED] Community
25X1A Security Group

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1. The Chairman announced that the purpose of the meeting was to discuss nondisclosure agreements for access to information controlled under the APEX system.

[redacted] noted that Form 4066, "Nondisclosure Agreement, Sensitive Compartmented Information," had been approved on both legal and security grounds in 1979 for use with the APEX system. Questions raised about Form 4066 afterwards caused it to be further reviewed by legal counsel. [redacted] advised that he and [redacted] had discussed proposed agreements recently with [redacted] the DCI's General Counsel, and with OGC staff members. The attorneys favored including a strengthened prior review element in the agreement so as to incorporate the Supreme Court ruling in the Snepp case. [redacted] noted that NSA also wanted to have the Intelligence Community agreement be a core package to which various elements of interest to particular agencies could be added. He said this approach was not necessarily accepted by all.

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2. [redacted], OGC, suggested the need for Committee members to address both a strengthened prior review element and the concept of optional clauses to be added to a core package. He summarized the Snepp case, and read portions of the Supreme Court ruling affirming CIA's secrecy agreement. [redacted] said there was doubt that Form 4066 adequately provided for prior review, and suggested that more specificity on that issue was needed.

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3. [redacted] asked if there was a difference between the circumstances of Snepp, who sought a CIA job and in return accepted certain obligations in the secrecy agreement, versus those of persons elsewhere in the Community who may already have a job and who are assigned access to APEX by their employers. [redacted] Deputy General Counsel, said he believed there would be no problem since their proposed formulation on prior review had a narrow reach. [redacted] said that since APEX access involved the Government's most sensitive information, it was only reasonable that access holders be asked to agree to prior review of materials bearing on APEX. He added that in recent conversation with Mr. Bass, Justice, the latter had expressed concern about lack of prior review language in existing nondisclosure agreements.

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25X1A 4. [REDACTED] distributed copies of OGC's 16 April draft nondisclosure agreement, and noted that it reflected several NSA wishes - e.g., the concept of "protected information" to provide an umbrella for inclusion of non-SCI material. [REDACTED] asked members to focus on paragraph 3 dealing with prior review, and suggested consideration of the long standing and universally understood term "sensitive compartmented information" (SCI) vice "protected information." [REDACTED] also suggested use of "SCI" terminology. [REDACTED] noted that paragraph 3 of the 16 April draft was much more specific on prior review than was paragraph 4 of the Form 4066, and said the question for member consideration was whether the benefits of such specificity were worth the effort of changing the form. He advised that nondisclosure agreements served the multiple purposes of security education, record keeping, and basis for punishing violations.

25X1A 5. In discussion of prior review language, SECOM members voiced no objection to using the OGC draft paragraph 3, and some spoke in favor of using the most specific language available on this subject. [REDACTED] said it appeared members were agreed that the OGC formulation should be considered as a replacement for paragraph 4 in Form 4066, and he asked that the Intelligence Community General Counsels consider such at their 25 April meeting. A suggestion was made that this consideration also address use of prior review language in the CIA secrecy agreement (Form 368, September 1979). [REDACTED] said the CIA language appeared to be tighter than that in their 16 April draft. Several SECOM members expressed agreement with and none objected to [REDACTED]'s suggestion that the General Counsels be asked to consider the CIA language as well, and that we leave the formulation of legally acceptable language on this issue to the attorneys.

25X1A 6. [REDACTED] stressed the urgency for a single APEX nondisclosure agreement for distribution at the 4-6 May seminar for APEX security officers. It was suggested that if Community agreement has not been obtained by then on a single form, the best available version should be used at that seminar with any changes dealt with later.

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7. [REDACTED] discussed the optional clauses in their 16 April draft, and said they would apply only to personnel of those agencies which chose to use such. [REDACTED] questioned the need for optional clauses in a Community form, and suggested that individual agency needs be accommodated by separate forms. [REDACTED] said it was desirable to keep the agreement short and simple, and he noted that the purpose of nondisclosure agreements is only to get people to agree not to disclose information. He advised that other matters such as travel restrictions were of a different nature and should be dealt with separately. He asked SECOM members to consider whether they wanted an elastic form which permitted optional clauses. [REDACTED] NSA, spoke in favor of this approach. All other members spoke in favor of having a standard form agreement of uniform text.

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8. [REDACTED] closed the meeting by recapitulating Committee action in favoring continued use of Form 4066 for uniform Community application with the APEX system, with the General Counsels to develop appropriate prior review language consistent with the Snepp case outcome as a substitute for paragraph 4 of the present 4066. (The Navy member, when later advised of this position, stated his concurrence therewith.) Lt. Col. Rothrock asked that the General Counsels pay particular attention to the agreement's applicability to contractor employees.

[REDACTED]
O Executive Secretary